UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/044,570	01/11/2002	Raj Jhanwar	MS#164036.2 (4933.1)	9456

321	7590	07/18/2006

SENNIGER POWERS
ONE METROPOLITAN SQUARE
16TH FLOOR
ST LOUIS, MO 63102

EXAMINER
FOWLKES, ANDRE R

ART UNIT	PAPER NUMBER
2192	

DATE MAILED: 07/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Office Action Summary	10/044,570	JHANWAR ET AL.
	Examiner	Art Unit
	Andre R. Fowlkes	2192

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE **3** MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *20 June 2006*.

2a) ☒ This action is **FINAL**.   2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1-16,27-34 and 36-42* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *1-16, 27-34 & 36-42* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All   b) ☐ Some *   c) ☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *6/20, 4/13 & 2/03*.

4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

DETAILED ACTION

1.   This action is in response to the amendment filed 4/18/06.

2.   Claims 1-16, 27-34 & 36-42 are pending. Claims 1, 27, 38 and 40-41 have been

amended.

Claim Rejections - 35 USC § 112

3.   The rejection of claims 40-41, under 35 U.S.C. 112, is withdrawn in view of

applicant's amendment.

Claim Rejections - 35 USC § 102

4.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-16, 17-34 & 36-42 are rejected under 35 U.S.C. 102(b) as being

anticipated by Albright, U.S. Patent Application No. 6,110,228 (AAPA).

As per claim 1, Albright discloses **a method for dynamically updating an**

operating system component prior to installation of the operating system

component on at least one destination machine, comprising (col. 1:35-40, "The

computer programs comprising the remote location <u>operating system</u> and application

programs will be changed from time to time as improvements are added to the

programs and as programming errors, typically referred to as "bugs", are found and

fixed", and col. 2:47-53, "In accordance with the invention, a computer network system

includes a software maintenance facility at a central site that operates with a customer

interface through which a customer at a remote location can request service and

receive updated executable code back from the software maintenance facility"), **said**

method comprising:

- **identifying update content related to the operating system component,**

initiated from one or more installation media (Albright col. 1:14-16 discloses that a

customer, responsible for dynamically identifying update content, can be a user or a

microcomputer terminal (comprising installation media) or an information system

support facility (i.e. installation media)), **before installing the operating system**

component on the destination machine from one or more installation media, said

operating system component being stored on one or more installation media and

being adapted for installation on the destination machine from the one or more

installation media (col. 2:58-63, "the front end permits the customer to specify a range

of operations, including service research (i.e. identifying update content), requesting

service, applying service, providing fixes, and installing serviced product or fixes at the

remote location. A service machine at the central site performs the requested service,

and the results are provided back to the customer", and Albright discloses at col. 1:41-

43 that "One method is to completely substitute an older program (i.e. operating system

component) with a new version of the same program." In this case, the new version of

the program is created by updating the old version of the program, prior to the

installation of the new program.),

        - obtaining the identified update content from one or more update media,

said media being remote from the destination machine (col. 2:47-53, "In accordance

with the invention, a computer network system includes a software maintenance facility

at a central site that operates with a customer interface through which a customer at a

remote location can request service and receive updated executable code back from

the software maintenance facility"),

        - merging the update content with the operating system component stored

on the installation media to create an updated operating system component

before installing the updated operating system component on the destination

machine (col. 2:47-53, "In accordance with the invention, a computer network system

includes a software maintenance facility at a central site that operates with a customer

interface through which a customer at a remote location can request service and

receive updated executable code (i.e. a updated operating system component) back

from the software maintenance facility"),

        - Installing the updated operating system component on the destination

machine (col. 2:47-53, "In accordance with the invention, a computer network system

includes a software maintenance facility at a central site that operates with a customer

interface through which a customer at a remote location can request service and

receive updated executable code (i.e. a updated operating system component) back

from the software maintenance facility").

As per claim 2, the rejection of claim 1 is incorporated and further, Albright

discloses that **obtaining update content from one or more media remote from the**

destination machine via a network (col. 2:26-31, "The fixes might be obtained, for

example, as copies of code changes recorded onto magnetic tape or disk. Alternatively,

the changes might be obtained over telecommunication lines such as through modem

connections. Changes might also be received directly over the network to which the

remote site is connected").

As per claim 3, the rejection of claim 2 is incorporated and further, Albright

discloses that **the network is the Internet** (col. 2:26-31, "The fixes might be obtained,

for example, as copies of code changes recorded onto magnetic tape or disk.

Alternatively, the changes might be obtained over telecommunication lines such as

through modem connections (i.e. Internet). Changes might also be received directly

over the network to which the remote site is connected").

As per claim 4, the rejection of claim 1 is incorporated and further, Albright

discloses that **the update content includes at least one file** (col. 1:35-40, "The

computer programs comprising the remote location operating system and application

programs (i.e. file) will be changed from time to time as improvements are added to the

programs and as programming errors, typically referred to as "bugs", are found and

fixed", and col. 2:47-53, "In accordance with the invention, a computer network system

includes a software maintenance facility at a central site that operates with a customer

interface through which a customer at a remote location can request service and

receive updated executable code back from the software maintenance facility").

As per claim 5, the rejection of claim 1 is incorporated and further, Albright

discloses that **the update content includes a patch** (col. 1:35-40, "The computer

programs comprising the remote location operating system and application programs

(i.e. file) will be changed from time to time as improvements are added to the programs

and as programming errors, typically referred to as "bugs" (i.e. patches), are found and

fixed").

As per claim 6, the rejection of claim 5 is incorporated and further, Albright

discloses that **the patch modifies the operating system component on the**

installation media prior to installation on the destination machine (col. 2:47-53, "In

accordance with the invention, a computer network system includes a software

maintenance facility at a central site that operates with a customer interface through

which a customer at a remote location can request service and receive updated

executable code back from the software maintenance facility").

As per claim 7, the rejection of claim 1 is incorporated and further, Albright

disclose that the update content includes **a driver for controlling hardware on the**

destination machine (col. 2:58-63, "the front end permits the customer to specify a

range of operations, including service research, requesting service, applying service,

providing fixes, and installing serviced product (i.e. drivers) or fixes at the remote

location. A service machine at the central site performs the requested service, and the

results are provided back to the customer").

As per claim 8, the rejection of claim 1 is incorporated and further, Albright

discloses that **identifying the update content comprises:**

- analyzing hardware or software or both on the destination machine (col.

2:58-63, "the front end permits the customer to specify a range of operations, including

service research (i.e. analyzing hardware or software), requesting service, applying

service, providing fixes, and installing serviced product or fixes at the remote location. A

service machine at the central site performs the requested service, and the results are

provided back to the customer").

As per claim 9, the rejection of claim 8 is incorporated and further, Albright

discloses **one or more computer readable media having computer-executable**

instructions for performing the method recited (col. 1:35-40, "The computer

programs comprising the remote location operating system and application programs

will be changed from time to time as improvements are added to the programs and as

programming errors, typically referred to as "bugs", are found and fixed", and col. 2:47-

53, "In accordance with the invention, a computer network system includes a software

maintenance facility at a central site that operates with a customer interface through

which a customer at a remote location can request service and receive updated

executable code back from the software maintenance facility").

As per claim 10, the rejection of claim 1 is incorporated and further, Albright

discloses that **the operating system component comprises operating system**

software or application program software or both (col. 1:35-40, "The computer

programs comprising the remote location operating system and application programs

will be changed from time to time as improvements are added to the programs and as

programming errors, typically referred to as "bugs", are found and fixed", and col. 2:47-

53, "In accordance with the invention, a computer network system includes a software

maintenance facility at a central site that operates with a customer interface through

which a customer at a remote location can request service and receive updated

executable code back from the software maintenance facility").

As per claim 11, the rejection of claim 1 is incorporated and further, Albright

discloses that **merging the update content with the operating system component**

comprises one or more of the following: patching, replacing, and adding to the

operating system component on the one or more installation media (col. 1:35-40,

"The computer programs comprising the remote location operating system and

application programs will be changed from time to time as improvements are added to

the programs and as programming errors, typically referred to as "bugs", are found and

fixed", and col. 2:47-53, "In accordance with the invention, a computer network system

includes a software maintenance facility at a central site that operates with a customer

interface through which a customer at a remote location can request service and

receive updated executable code back from the software maintenance facility").

As per claim 12, the rejection of claim 1 is incorporated and further, Albright

discloses **extracting at least one file from the update content during the**

installation of the operating system component (col. 1:35-40, "The computer

programs comprising the remote location operating system and application programs

will be changed from time to time as improvements are added to the programs and as

programming errors, typically referred to as "bugs", are found and fixed (i.e. extracted)",

and col. 2:47-53, "In accordance with the invention, a computer network system

includes a software maintenance facility at a central site that operates with a customer

interface through which a customer at a remote location can request service and

receive updated executable code back from the software maintenance facility").

As per claim 13, the rejection of claim 1 is incorporated and further, Albright

discloses that **pre-processing the update content in preparation for installation**

(col. 1:35-40, "The computer programs comprising the remote location operating system

and application programs will be changed from time to time as improvements are added

to the programs and as programming errors, typically referred to as "bugs", are found

and fixed", and col. 2:47-53, "In accordance with the invention, a computer network

system includes a software maintenance facility at a central site (pre-processes the

update content) that operates with a customer interface through which a customer at a

remote location can request service and receive updated executable code back from

the software maintenance facility").

As per claim 14, the rejection of claim 1 is incorporated and further, Albright

discloses that **the operating system component comprises one or more files**

wherein installing the updated operating system component on the destination

machine comprises:

- searching the update content for each of the files (col. 2:58-63, "the front

end permits the customer to specify a range of operations, including service research

(i.e. searching for files), requesting service, applying service, providing fixes, and

installing serviced product or fixes at the remote location. A service machine at the

central site performs the requested service, and the results are provided back to the

customer"),

- searching the one or more installation media for each of the files not

found in the update content (col. 2:58-63, "the front end permits the customer to

specify a range of operations, including service research (i.e. searching for files),

requesting service, applying service, providing fixes, and installing serviced product or

fixes at the remote location. A service machine at the central site performs the

requested service, and the results are provided back to the customer").

As per claim 15, the rejection of claim 1 is incorporated and further, Albright

discloses **specifying registry to automate installation of the updated operating**

system component (col. 1:35-40, "The computer programs comprising the remote

location operating system and application programs will be changed from time to time

as improvements are added to the programs and as programming errors, typically

referred to as "bugs", are found and fixed", and col. 2:47-53, "In accordance with the

invention, a computer network system includes a software maintenance facility at a

central site (pre-processes the update content) that operates with a customer interface

through which a customer at a remote location can request service and receive updated

executable code back from the software maintenance facility").

As per claim 16, the rejection of claim 1 is incorporated and further, Albright

discloses **one or more computer readable media having computer-executable**

instructions for performing the method recited (col. 1:35-40, "The computer

programs comprising the remote location operating system and application programs

will be changed from time to time as improvements are added to the programs and as

programming errors, typically referred to as "bugs", are found and fixed", and col. 2:47-

53, "In accordance with the invention, a computer network system includes a software

maintenance facility at a central site (pre-processes the update content) that operates

with a customer interface through which a customer at a remote location can request service and receive updated executable code back from the software maintenance facility").

As per claims 27-34 and 36-37, this is a computer readable media version of the claimed method discussed above, in claims 1-11 and 13, wherein all claimed limitations have also been addressed and/or cited as set forth above. For example, see Albrights system for automatically transitioning files among computer systems (col. 1:35-2:63).

As per claims 38-39, this is a system version of the claimed method discussed above, in claims 1 and 10, wherein all claimed limitations have also been addressed and/or cited as set forth above. For example, see Albrights system for automatically transitioning files among computer systems (col. 1:35-2:63).

As per claims 40-42, this is another method version of the claimed method discussed above, in claims 7 and 11, wherein all claimed limitations have also been addressed and/or cited as set forth above. For example, see Albrights system for automatically transitioning files among computer systems (col. 1:35-2:63).

Response to Arguments

5.   Applicants arguments have been considered but they are not persuasive.

In the remarks, the applicant has argued substantially that:

1)   The Albright patent teaches away from the present invention by disclosing that a

service, such as updating an operating system component is performed after the

operating system component is installed, while claim 1 requires that the update content

related to the operating system component is identified and installed prior to installing

the operating system components, at p. 9:15-25 and 10:15-22.

Examiner's response:

1)   The examiner disagrees with applicant's characterization of the applied art.

Albright discloses at col. 1:41-43 that "One method is to completely substitute an older

program with a new version of the same program." In this case, the new version of the

program/operating system component is created by updating the old version of the

program/operating system component, prior to the installation of the new

program/operating system component.

In the remarks, the applicant has argued substantially that:

2)   The Albright patent does not disclose that the installation media initiates the

identification and installation of an operating system update component, at p. 9:19-25

and 10:18-20.

Examiner's response:

2)   The examiner disagrees with applicant's characterization of the applied art. The applicant uses Albright col. 2:54-57 to argue that the customer/user initiates a request for service. Albright 2:54-57 discloses that "the first processing step being with the receipt of <u>customer</u> system required changes in the form of a service request." However, Albright col. 1:14-16 discloses that "a customer can comprise a user, <u>or a microcomputer terminal (comprising installation media) or an information system support facility (i.e. installation media.)</u>"

In the remarks, the applicant has argued substantially that:

3)   Albright does not disclose initiating the dynamic update of the operating system, at p. 10:3-18.

Examiner's response:

3)   The examiner disagrees with applicant's characterization of the applied art. The applicant uses the Albright abstract to argue that the customer/user initiates a request for service in a fashion that is not dynamic. The Albright abstract discloses that "A <u>customer</u> initiates a service request" However, Albright col. 1:14-16 discloses that the <u>microcomputer terminal or an information system support facility</u> can initiate an update in a dynamic manner.

Conclusion

6.   Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37

CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Andre R. Fowlkes whose telephone number is (571)

272-3697. The examiner can normally be reached on Monday - Friday, 8:00am-
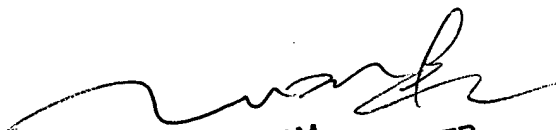
4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Tuan Q. Dam can be reached on (571)272-3695. The fax phone number for

the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ARF

TUAN DAM
SUPERVISORY PATENT EXAMINER